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In re Application of	:	DECISION ON
BARGES et al	:	
Application No.: 10/069,681	:	
PCT No.: PCT/EP00/08048	:	PETITION
Int. Filing Date: 17 August 2000	:	
Priority Date: 20 August 1999	:	
Attorney's Docket No.: P32396	:	UNDER 37 CFR 1.182
For: PHARMACEUTICAL FORMULATION	:	
COMPRISING AMOXYCILLIN AND	:	
CLAVULANATE	:	

This decision is in response to the "PETITION UNDER 37 CFR §1.181 OR A PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ADANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)" filed 19 February 2004, which is being treated as a petition under 37 CFR 1.182 to withdraw the holding of abandonment. Applicants' Deposit Account No. 19-2570 is being charged the \$130.00 petition fee as authorized in the petition submitted on 19 February 2004. The petition fee of \$1,330.00 under 1.137(b) will be refunded to applicants' Deposit Account no: 19-2570 since the petition is being acted under 37 CFR 1.182.

BACKGROUND

On 17 August 2000, this international application was filed, claiming an earliest priority date of 20 August 1999.

On 19 February 2002, applicants filed a Transmittal letter for entry into the national stage in the United States, which was accompanied, inter alia, by the requisite basic national fee as required by 35 U.S.C. 371 (c)(1). However, no oath or declaration of the inventors accompanied the transmittal letter.

On 02 May 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" must be submitted within two(months) from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 02 December 2002, applicants filed a response to the NOTIFICATION OF MISSING REQUIREMENTS. However, the response contained the incorrect U.S. serial number 09/077,263 instead of the incorrect number 10/069,681.

On 29 January 2004, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909), which indicated that applicant has failed to respond to the notification of MISSING REQUIREMENTS (Form PCT/DO/EO/905), mailed 05/02/2002 within the time period set therein.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 29 January 2004, applicants have submitted the instant petition requesting withdrawal of the Notice of Abandonment or a Revival of the application unintentionally abandoned. In support of the petition, applicants have provided a copy of the returned/stamped receipt card acknowledging a receipt date of 02 December 2002 and a statement that there was sufficient identification of the correct Application Number because the papers submitted did have the application's correct Docket No., and correct International Application No. PCT/EP00/08048.

DISCUSSION

POSTCARD:

Applicants' present petition accompanied by a copy of the following documents, filed purportedly, *inter alia*, with the PTO as indicated in the stamped postcard:

- (1) Declaration & Power of Attorney
- (2) Assignment
- (3) Transmittal letter National Stage Entry

The postcard lists the above items and bears a USPTO date of stamp as 02 December 2002.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicants' postcard is accepted as *prima facie* that a Declaration was deposited with the U.S. Patent and Trademark Office on 02 December 2002.

Accordingly, the date of receipt for the Declaration is 02 December 2002.

INCORRECT NUMBER:

Applicants states that there was sufficient identification of the correct Application Number because the papers submitted did have the application's correct Docket No., and correct

International Application No. PCT/EP00/08048. In this instance, there is sufficient evidence that the application number 09/077,263 on the Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) is incorrect. It is apparent from the papers submitted that the correct application number to the Reply to the Notification of Missing Requirement is 10/069,681 because there is sufficient identification such as the correct Attorney Docket No., and the correct International Application No.: PCT/EP00/08048 to correlate the submitted papers with the correct Application (10/069,681).

Since the declaration was submitted on 02 December 2002 five months after the due date indicated by the Notification mailed on 02 May 2002, there is a five (5) month extension fee of \$2,010.00 being charged to applicant's Deposit Account no.: 19-2570. This has been authorized in the petition filed.

Accordingly, applicants petition to accept these papers for the instant application is granted.

DECISION

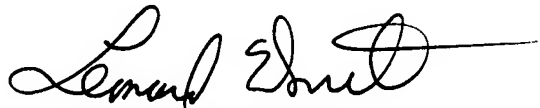
Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is **GRANTED** since the reply filed on 02 December 2004 was a timely response to the Notification of Missing Requirements mailed on 02 May 2002. The NOTIFICATION OF ABANDONMENT, mailed 29 January 2004 has been **VACATED**. The application will be given a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of **02 December 2002**.

The petition under 37 CFR 1.182 is **GRANTED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision.



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